

REMARKS/ARGUMENTS

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 are pending in this Application.

By this Amendment, claims 1, 4, 11, 18-21, 23, and 24 are currently amended. Applicants respectfully submit that support for the claim amendments can be found throughout the specification and the drawings.

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 remain pending in the Application after entry of this Amendment. No new matter has been entered.

In the Office Action, claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. (hereinafter “Boarman”) in view of U.S. Patent Application Publication No. 2002/0147675 (hereinafter “Das”).

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Without conceding the merit of any rejection under 35 U.S.C. § 112, Applicants have amended claims at least claims 1, 11, and 18 to further clarify how the claims relate to a single auction at the end of which the recited item is awarded. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph as being indefinite.

Claim Rejections Under 35 U.S. C. § 103(a)

Applicants respectfully traverse the rejections to claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 and request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) based on Boarman and Das. Applicants respectfully submit that Boarman and Das, either individually or in combination, fail to disclose one or more of the claim limitations recited in each of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24. These differences, along with other differences, establish that the subject matter as a whole of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 would not have been obvious at the time of invention to a person of ordinary skill in the art.

The Office Action asserts that the claims still seem like a combination of a Dutch auction and an English Auction, both of which are asserted to be well known. However, the Office Action fails to provide any evidence or a convincing line of reasoning that it would have been obvious to one skilled in the art to use the rules of a Dutch auction as a first phase of single auction and as a seed price for the rules of an English auction as a second phase of the same auction as recited in amended claim 1. Specifically, for example, amended claim 1 recites receiving, at one or more computer systems configured to manage the auction, one or more rules defining when the right and obligation to purchase the item will be awarded. As recited, the one or more rules specify a first phase for the auction the first phase during which the right and obligation to purchase the item will not be awarded to any of the auction participants and a second phase for the auction during which right and obligation to purchase the item will be awarded to at least one of the auction participants. As further recited, the first phase provides a seed price for the second phase to which the one or more computer systems compare bids from the auction participants.

This limitation is supported in the Application, for example, at least on page 3, lines 19-21 where the Application teaches that the rules of given auctions are often adjusted to address certain problems. Accordingly, to provide the benefits of more quickly arriving at a perceived market value for the item, amended claim 1 provides a single auction for which during a first phase the rules of a Dutch-style auction apply periodically decreasing the asking price of the item until a first bid is received. Nowhere does claim 1 indicate that the first bid completes a transaction, in contrast, amended claim 1 recites that the first bid is used as a seed price for a second phase during which the rules of an English-style auction apply accepting increasingly higher bids until the item is awarded to a highest bidder among the first bidder and the at least one additional bidder when one or more predetermined criteria specified by the one or more rules signal the end of the second phase of the auction.

Boarman and Das do not disclose the combination of rule of Dutch-style and English-style auctions into at least two phases of a single auction where the item is only awarded after going through both phases of the auction as recited in amended claim 1.

Accordingly, Applicants respectfully submit that Boarman and Das fails to disclose each and every claim limitation as recited in amended claim 1. Applicants further respectfully submit that none of the cited references cure the above-discussed deficiencies of Boarman and Das, and thus, amended claim 1 is allowable over the cited references.

Applicants respectfully submit that independent claims 11 and 18 are allowable for at least a similar rationale as discussed above for the allowability of claim 1, and others. Applicants respectfully submit that the dependent claims that depend directly and/or indirectly from independent claims 1, 11, or 18 are also allowable for at least a similar rationale as discussed above for the allowability of the independent claims. Applicants further respectfully submit that the dependent claims recite additional features that make the dependent claims allowable for additional reasons.

Applicants further respectfully request evidence of the conclusions offered in the Office Action. For example, on page 3, the Office Action concludes “In an auction or any transaction, when the bid price meets/matches the ask price the transaction is over.” However, Applicants respectfully submit that the rules or provisions of an auction or transaction govern when the transaction is over. Of course, the rules or provisions of an auction or transaction may indicate that when the bid price meets/matches the ask price the transaction is over. However, the Office Action offers no evidence indicating that those or the only rules or provision every allowed in an auction. On the contrary, the existence of Dutch-style and English-style auction indicate otherwise in that rules of the auctions or transaction may be altered to better serve the needs of the participants. As discussed above, a hybrid auction as recited in amended claim 1 better serves the needs of participants by more quickly and efficiently achieving an auctioned item’s true or perceived market value. As outlined in FIG. 4 of the Application, the asking price of an item is periodically decreased until at least one market participant (i.e., the first bidder) indicates a willingness to obtain the item at the current asking price. The seller is then give the opportunity to see whether there is a true or perceived market value above the first bid. The seller may be able to achieve a slightly greater gain because other bidders are free in the second phase to outbid the first bidder. These other bidders may not have been willing to bid at the current asking price or higher during the first phase, for example, because there was not

information indicating a true or perceived market value. Now that one has been established in the first phase, the second phase is started with the first bid being the seed price and bidding continues until certain conditions are met thereby awarding the item to a highest bidder among the first bidder and at least one additional bidder. Accordingly, if the first bidder was the sole bidder, the item is awarded. Otherwise the item may be awarded to another bidder who is able to provide a higher true or perceived market value in the form of a higher bid. Thus, the true or perceived market value of the item is reached more quickly and efficiently utilizing a hybrid approach selected from different auction styles.

Unless otherwise specified, amendments to the claims are made for the purposes of clarity, and are not intended to alter the scope of the claims or limit any equivalents thereof.

While Applicants do not necessarily agree with the prior art rejections set forth in the Office Action, these amendments may be made to expedite issuance of the Application. Applicants reserve the right to pursue claims to subject matter similar to those pending before the present Amendment in co-pending or subsequent applications.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Further, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment in connection with this paper to Deposit Account No. 20-1430.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

/Sean F. Parmenter, Reg. No. 53,437/
Sean F. Parmenter
Reg. No. 53,437

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
SFP:lls
62937352 v1